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## **Texas' Historically Underutilized Business Program**

### **Can Affirmative Action Run on Good Faith?**

**APPROVED BY**

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**Dagney Devlin Pruner, B.A.**

**Report**

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*To all the struggling business owners  
who weren't afraid to speak up.*

## **Texas' Historically Underutilized Business Program**

### **Can Affirmative Action Run on Good Faith?**

by

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The University of Texas at Austin

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The State of Texas has long been known for its thriving economy, but it has left many behind on its path to greatness. Systematic and deep-rooted hurdles have stopped minority-owned businesses from being able to flourish in the Lone Star State. Lack of access to capital and difficulty breaking into business circles that white men have dominated for years have plagued these businesses, curtailing their growth. As a result, the state founded the Historically Underutilized Business program nearly 30 years ago to address these barriers to entry. The program seeks to make “good faith” efforts to boost minority-owned businesses by proactively allocating state contracts to these businesses. However, without enforcement or oversight protocols in place, and no repercussions for those who sidestep the program, many minority-owned businesses see the program as obsolete. The statistics agree: the program has not seen any improvement in overall minority-contracting levels in 25 years. While some minorities, like woman-owned

businesses, have grown under the program, other minorities, predominantly black-owned businesses, remain stagnant. The disparity has created a cultural and monetary divide between these communities. This rift has led to allegations of corruption and shed a harsh light on persistent issues with the state's contracting process. Minority-owned businesses have been hesitant to speak out against the program in the fear that they will be blacklisted by the state agencies that distribute the contracts. In recent years, the program's issues and the divide between minority business owners have come to the forefront of African-American legislators' minds. Lawmakers are now looking for ways to incentivize the "good faith" program in the hopes that minorities will finally see equal and sustainable success. However, with 25 years of stagnation and no enforcement strategy, business owners are skeptical.

## Table of Contents

|                     |    |
|---------------------|----|
| Text.....           | 1  |
| Narrowing road..... | 4  |
| Remedial.....       | 6  |
| Setting goals.....  | 8  |
| Old habits.....     | 10 |
| Capital.....        | 13 |
| Persistence.....    | 16 |
| Stagnant.....       | 21 |
| Repercussions.....  | 23 |
| Goliath.....        | 26 |
| Enforcement.....    | 30 |
| Texas pride.....    | 32 |
| Divided.....        | 34 |
| Bibliography.....   | 39 |
| Vita.....           | 41 |

Patricia Alexander remembers when she didn't know how she was going to be able to pay her bills.

"I had exhausted all my savings, and I was worried about where I was going to stay at night," she said.

Alexander, a sixty-two-year old African-American and Houston native, had tried to start her own staffing company in 2008 during the recession. After working for a year and a half to earn her underutilized business certifications and get her company off the ground, she had run out of money. The state defines an underutilized businesses as an entity owned by economically disadvantaged minorities and women.

Once certified, business owners like Alexander can get a piece of the state's contract spending, which was \$18.9 billion in fiscal 2016. Without the certification, they would have little chance to win that business.

Last July, she decided to give her staffing company another shot. This time, she secured her minority certification at the city and state level in a month and incorporated her business, Once Staffing Services Inc.



“I went to a lot of classes to learn how to start my business and utilize the disadvantaged business programs,” said Alexander. “You just have to get that perfect opportunity.”

Although she describes herself as “hopeful,” Alexander says she has seen the frustrating politics of Texas’ minority-contracting program. Now she is fighting the institutional roadblocks for minority-owned businesses to keep her business afloat, and she’s not alone.

Texas lawmakers founded the “historically underutilized business,” or HUB, program in 1991 as an attempt to “increase the opportunities available to businesses owned by the minorities and women in the area of state procurement and contracting,” according to the Comptroller of Public Accounts.

In the early 1990s, ruling in lawsuits brought by white-owned businesses, the U.S. Supreme Court said that states had to base their programs on good-faith efforts, not on set-asides that designated a percentage of contracts to minority and female owned contractors.

But Texas' good-faith goals have not significantly increased opportunities for minority- or woman-owned businesses. Since 1993, minority-contracting levels have remained essentially unchanged, hovering around 11 percent, due to a wide array of issues.

To qualify for the state program, businesses must be at least 51 percent owned by an Asian American, African-American, Hispanic, Native American or American woman. The owner must live in Texas and have an "active participation" in the daily operations and management of the company. The Texas Administrative Code requires that state agencies use "good-faith, timely efforts to HUBs regarding contracting opportunities."

Businesses involved in the program long have complained that the program is not effective. Lawmakers and state agency leaders also have come to realize that "good faith" doesn't seem to even the playing field for minority enterprises.

The issues include lack of oversight and accountability, and spotty enforcement. Some minority business leaders assert that a disproportionate number of contracts go to companies owned by white women. Another complaint is that some companies have figurehead top executives, but in fact not minority-owned.

Minority businesses encounter a variety of roadblocks to success that many white- and male-owned businesses do not. It's hard for them to raise capital, and difficult to break into the business circles that white men have dominated for years.

Some lawmakers are hoping to prod state agencies to improve their performance by creating monetary incentives to meet their goals. They also are seeking ways to increase access to capital for minority businesses.

"Here we are almost 30 years later, and we're still struggling with how best to make this an effective piece of legislation," said Charles O'Neal, president of the Texas Association of African American Chambers of Commerce. "If in fact the intent is to include HUBs in an effort to increase utilization, why would you continue to award contracts with no HUB participation?"

### **Narrowing road**

Minority contracting has been an issue for many states, not just Texas. The Lone Star State is one of 38 that have programs to promote disadvantaged businesses.

In the wake of the civil rights movement of the 1960s, a succession of presidents supported various forms of affirmative action legislation. The U.S Commission on Civil Rights during the 1970s found it a necessary response to the realization that “simple prohibition of racially discriminatory and employment and contracting practices alone” were not going to improve economic opportunities for minority businesses, according to the commission’s 1977 Statement on Affirmative Action.

Federal inclusive business programs were first introduced under President Dwight D. Eisenhower and continued into the Reagan years, either by executive order or acts of Congress. The programs took shape during the late 1980s as the federal government set minority contracting benchmarks, and the programs’ reach was tested in the Supreme Court.

However, a series of Supreme Court rulings in the late 1980s and early 1990s found that programs that set aside a percentage of government contracts solely for minority businesses was unconstitutional under the Equal Protection Clause of the 14th Amendment. The federal courts determined that states needed to “narrowly tailor” their programs and create contracting goals instead of requirements.

As the legal requirements became clear, Texas began its HUB program in 1991 under House Bill 799 authored by Rep. Harold Dutton Jr., an African-American

Democrat from Houston. At the time, state agencies were awarding 1.5 percent of their contracts to minority and woman-owned businesses. The bill set a 10 percent goal for minority contracting efforts and established criminal penalties for unqualified companies that applied for certification.

Although the program was a large step for minority interests, its shortcomings didn't come into focus until lawmakers called for a study to paint a more accurate picture of Texas' disadvantaged businesses.

## **Remedial**

The study, conducted in 1994, sought to measure whether state contracting reflected the demographics of Texas.

Texas commissioned the first disparity study in 1994, mandated by House Bill 2626, authored by Rep. Layton Black, a Democrat from Goldthwaite, during the 73rd Legislature. The co-sponsor was freshman Sen. Royce West, an African-American Democrat from Dallas, who still leads the charge for disadvantaged businesses today.

The bill required state agencies to provide information on their minority contracting to the Texas General Services Commission, which would set goals for each agency and establish rules for the program based on the study's findings.

The study, which cost over \$1 million, looked at procurement and contracting rates at state agencies from the 1989 to 1993 fiscal years. It focused on five major agencies, including the state's largest, the Texas Department of Transportation.

The study found "disparities and discrimination in nearly all categories" of procurement and contracting, and determined the foundation for Texas' minority-contracting program. A Joint Select Committee formed in 1994 by Lt. Gov. Bob Bullock and Speaker James E. (Pete) Laney agreed.

The committee's research found that the state was falling short on engaging with minority businesses overall, and that it performed especially poorly with African-American-owned businesses. Just 0.0001 percent of state business was awarded to black businesses, according to the research. The committee concluded that "a lax response to eliminating identified disparity in state contracting will place the state in the position of defending its policies in court."

No lawmaker or state agency has found itself in serious legal trouble since the program's inception. But neither has minority contracting increased since the disparity study.

### **Setting goals**

Both Democrats and Republicans supported the state's good-faith-based minority-contracting program.

"It makes smart political sense for Republicans," said Brandon Rottinghaus, political professor at the University of Houston. "They want to be seen as inclusive, but also favor a market-based approach to monetary allocations the state."

Texas spent over a decade operating under the good-faith-based HUB program. with little success in increasing minority-business engagement. It wasn't until the state commissioned a new disparity study in 2009 that the Comptroller's office program began setting goals to benchmark progress.

The "goals" are broken into six procurement categories: heavy construction, building construction, special trade, professional services, commodities and other

services. The procurement goals are based on the findings of the disparity study.

The Comptroller of Public Accounts oversees the program.

“The whole purpose of this study is to determine whether or not goals are reflective of the current market area,” said Reggie Smith, the vice president of disparity solutions at MGT of America, which conducted the survey. MGT has conducted over 200 studies around the country to determine best practices for such programs.

Its statewide analysis included data from 210 state agencies, health centers and institutions of higher education, as well as business surveys and anecdotal evidence from over 1,000 businesses from the 2005 to 2008 fiscal years. It was MGT’s largest assessment ever, according to Smith.

The study found that the minority-contracting rate had not changed in 15 years.

The study recommended goals based on overall spending on contracts for each of the six procurement categories, which Texas put in place. The state now had benchmarks, and in some categories, they were almost double the then-current rate.



The report concluded with a recommendation that Texas continue its minority-contracting program based on “statistical disparities by race, ethnicity and gender classification in the current HUB utilization, particularly in prime contracting.”

Prime contractors are the large companies, sometimes multinationals, that get the state’s largest contracts.

### **Old habits**

Many minority and woman-owned businesses haven’t found success under the program and find that, even if they do their research, it’s hard to break into the market.

“There’s years and years of practice that makes it more difficult to anyone other than white-owned businesses, or businesses that have been historically used by the state, to break through,” said O’Neal, the African-American chamber leader.

Some agencies ask businesses for references from other state agencies for whom they have done work. But that’s something many minority and woman-owned businesses don’t have.

“Procurement staff looks for a preference point, they ask: ‘Have you done business with this agency before?’” said O’Neal. “Many of them haven’t, so you lose even if you say you have the same credentials” as a non-minority company bidding for the contract.

The 2009 disparity study found that “the greatest concern was the difficulty of competing with firms” in their specialty area. Many prime contractors tend to repeatedly award subcontracts to the same firms repeatedly.

Primes aren’t picking you up unless you know somebody, said Patricia Alexander.

“People will want take to the path of least resistance. That’s how they’ve done it a long time,” said Jake Elliott, head of sales for Spectrum Technologies, an El Paso-based HUB-certified company.

The difficulty of breaking into the HUB subcontracting market can be a huge deterrent for businesses.

“You’ve seen many African-American firms say, ‘I’m out of here. I can’t continue to invest my marketing dollars for something I’m not getting in return,” said Helen

Callier, founder of Houston-based Brandlink LLC, a HUB-certified, black-owned project management company

Many minority and woman-owned businesses seek contracts in the private sector, but they often find even more barriers. The 2009 disparity study found that private sector commercial projects for construction in major cities used HUB business only 1 or 2 percent of the time.

“That is the one of the largest barriers -- not having the opportunity to get that experience so that business can continue to grow,” said Courtney Rose, chairwoman of the Greater Houston Black Chamber of Commerce.

Other barriers in the minority-contracting program are minor, but can be an administrative hassle for small businesses with few employees. The agencies can nitpick certificate applications and bid proposals, using a wide array of criteria to reject them, said Jodie Moore, a former state auditor and a HUB contractor.

“I once saw a guy get his bid proposal disqualified because he forgot his application signature on one page,” he said. “Businesses are scrutinized heavily when they are trying to be a HUB.”

Moore now consults with businesses that are looking to expand their portfolio through the minority-contract program. He encourages them to submit an open records request with the state agency to find out why their bids were rejected.

“They have to realize it’s not a one-and-done thing. It’s a learning process,” he said.

Many businesses are leery of speaking out about their troubles with the procurement process for fear of being blackballed by certain state agencies.

“Many are apprehensive about speaking out on it because it can personally affect them,” said Rose. She encourages using trade associations, like their city’s chamber of commerce, to do the lobbying on their behalf. Business owners such as Patricia Alexander went to her local chamber instead of discussing an ongoing issue with state agencies.

“We can speak out and help articulate those issues when they can’t,” said Rose.

## **Capital**

Networking and administrative barriers pose a threat to minority businesses’ success, but another roadblock looms: money.

“If there’s one thing that hampers them more than anything else, it’s capital,” said Jodie Moore, who is African-American. A former employee of the Comptroller’s office, he now is a consultant in Houston. “A lot of them get disqualified because they can’t hold that money up.”

Alexander experienced that firsthand when she tried to get a \$5,000 loan to help pay her company’s startup costs. She went to nonprofit micro-lender LiftFund, based in San Antonio. The nonprofit put her through numerous screening exercises, including an aptitude test, but did not give her a loan.

“Nothing on the test was trying to prove that I was incapable of paying back the loan,” said Alexander. “They put you through this, and to me, it’s all politics.”

Alexander’s experience is not out of the norm. The University of Texas’ Bureau of Business Research’s 2014 survey found the most frequently mentioned challenge for black-owned businesses was funding, cash flow and finances. Bidding for and winning contracts was the second most challenging area.

“I was conversing with a HUB firm a couple of weeks ago that could barely get a line of credit,” said Callier. “They couldn’t even get \$100,000 with a half-million state contract pending.”

The survey also found that 75 percent of the capital black-owned businesses used to start or purchase their business came from personal savings. Almost, 20 percent of businesses said they were turned down for a loan.

The state requires companies to demonstrate they have enough capital to show that they can handle the logistical and financial burden of a state contract, and that means disclosing their balance sheets.

“So if you’re not able to go to a financial institution for a loan, you’re out before you even begin,” said O’Neal.

Rep. Eric Johnson, an African-American Democrat from Dallas, filed House Bill 671 this session, which would divert 10 percent of the funds from Texas’ Enterprise Fund to the Capital Access Fund. The capital access program was founded in 1997 “to increase the availability of financing for businesses and non-profit organizations that face barriers to accessing capital.”

The Enterprise Fund was created in 2003 as a deal-closing mechanism to attract corporations to Texas. Critics have called for its abolition after an audit revealed loose oversight and accountability.

“Access to capital is a huge barrier for some of these companies for procurement opportunities,” said Johnson. “They don’t have the access to be able to grow these companies, and the Capital Access Program is about making it more attractive.”

“They just need a boost to get their business going,” said Meghan Rawker, who works at small business lender PeopleFund, during the bill’s committee hearing. “Without it, these people are turned away from traditional lenders... they turn to predatory lenders or higher interest credit cards, which gets them into debt that they often cannot get out of.”

## **Persistence**

Once businesses have the certification and capital they need, the difficulties don’t stop. Procurement coordinators and business owners agree on one thing when it comes to being successful in the HUB program: persistence.

“If an agency has money to make by business be successful, we’re going to stay on that like a dog at a meat shop,” said Callier. “We live and breathe the procurement process.”

The procurement process is difficult to maneuver for most small businesses, with over 200 agencies in Texas having hundreds of contracts at any one time. There is a lot of research that small businesses need to do before preparing a bid.

“I will work on preparing a project for years before I even bid,” said Jeanie Jacobs, the head of business development for HUB-certified, Hispanic-owned ATEC Communications, an IT firm based in Houston. “I’ll prepare proposals that are hundreds of pages, four binders thick, that give references and has pictures of past projects, because often they don’t want to have to read.”

Procurement officers agree that businesses need to do their homework.

“Vendors need to educate themselves,” said Laura Cagle-Hinojosa, the statewide HUB manager at the Comptroller’s Office, who previously worked in procurement at the Texas Commission on Environmental Quality for over a decade. “Each agency is different, so they need to know how to market themselves.”



Cagle-Hinojosa often gives presentations on how to identify contracts that could be a good fit for small businesses. In a forum at a HUB vendor fair in April in North Austin, Cagle-Hinojosa's presentation included advice such as like "Bottom line: know your market" and "think outside the box" when businesses create their procurement strategies.

The state holds vendor fairs and roundtables year-round in major Texas cities. Workshops walk HUBs through the comptroller and Legislative Budget Board websites so vendors know step-by-step how to identify opportunities.

"The state of Texas' HUB program is a very valuable tool, and everybody should know who the state players are and attend the conferences because that's how you gain the business," Jacobs said.

"Face-to-face contact is key, as are one-on-one interviews. It's critical so you have to take the time to do it," she said. "It takes a lot of cold-calling. You have to track the bids and you have to be diehard."

Elliott of Spectrum Technologies knows that even when a company identifies opportunities with state agencies, it takes work to turn opportunities into contracts.

“It’s a grind. We work hard to put together aggressive proposals,” said Jake Elliott, director of sales at the company, which provides network support, document management and other services. “There comes a certain element of salesmanship and how to get in front of the right contacts, not just somebody with their hand out looking for work.”

Spectrum has found that its isolated location has given it an edge as a subcontractor, as many of the large prime contractors don’t have a local field presence, said Elliott.

Spectrum was founded in 1911 as an office supply company. Elliott’s grandfather, an immigrant from Chihuahua, Mexico, started there in the 1960s and became an owner in the 1980s.

“For us, the HUB program is amazing. It allows us to be able to work with large agencies where we otherwise might not have the opportunity,” said Elliott. “The opportunity outweighs the challenges of the program, absolutely.”

Spectrum has been a certified HUB business since the Texas program began, and secured over \$700,000 in HUB contracts last fiscal year.

Jeannie Jacobs said her firm also seeks to make it as easy as possible for prime contractors or state agencies to choose their business over others. “I’ll even put the proposals on good paper with nice ink,” she said.

She doesn’t stop there. Staying in front of prime contractors and state agencies is the best way to consistently win contracts, she said. Jacobs will send business cards with bags of candy to contractors or procurement officers during the holidays. She prepped her Easter candy bags for weeks.

“For five years I’ve been doing this, and I have more business than I could possibly ever do,” said Jacobs.

The difficulty for many small businesses is that they don’t have enough bandwidth to hire business development employees such as Jacobs, whose job is to hunt down contracts.

The Bureau of Business Research’s 2014 Survey of Texas Black-Owned Businesses found that 85 percent of black-owned businesses reported they employed 10 people or fewer, while the average Texas company has 23 people.

Patricia Alexander’s operation is one of them.

“I’m a one-woman operation, so I have limited options,” said Alexander. “How do I get my foot in the door?”

## **Stagnant**

The Comptroller’s office now releases an annual report on the performance of the HUB program, which includes businesses owned by service-disabled veterans, along with minorities and women. In its 2016 report, the comptroller reported a HUB utilization rate of 11.3 percent of all statewide contract expenditures, unchanged from disparity studies’ findings in 1994 and 2009.

The report found that, in every procurement category, the state missed its goals. Some categories, such as like heavy construction, met only a third of their goals.

“It’s a disaster,” said Rep. Eric Johnson, an African-American Democrat from Dallas. “By our own standards, we’re doing terribly, and our standards aren’t even that high.”

Johnson has been vocal about his disappointment in HUB’s performance, frustrated by the government’s unwillingness to make the program a priority.

“Where else can we consistently fail, and fail miserably, and that be OK with everybody?” he said.

The shortcomings of the program were not a new development for the state. The 2009 disparity study found that one in 10 minority and women-owned businesses reported discriminatory experiences with state agencies over the past five years.

“From a good ol’ boy club standpoint, it’s about relationships,” said Helen Callier.

She finds her inspiration in Barbara Jordan, the first black woman elected to the Texas Senate since Reconstruction, and the first black southern woman elected to the U.S. House

“You would hear about her ‘throwing back Jack’ with the folks across the aisle, smoking cigars, because it’s about relationships,” said Callier. “So they are going to see Helen as part of the good ol’ boy club, too.”

Callier knows her success under the HUB program, is not the norm.

“Is the program meeting its designed purpose {since} being established or not?” she said. “It’s not.”

## **Repercussions**

The 2009 disparity study also found that large companies often would list minority companies on state contract bids, but then drop those companies after winning the contract. Respondents also felt there was “inadequate enforcement” to prevent that practice.

Patricia Alexander encountered that situation on her most recent project with a construction company that awarded her a \$75,000 subcontract for staffing service, but then didn’t hire any of her candidates.

“Since I’ve had the contract, not one of them has been utilized. They haven’t honored one,” said Alexander, who has sent the prime contractor over 50 applicants for the project. “It’s just heartbreaking to me. I know they’re qualified. I just don’t know why they’re not using it.”

Alexander reached out to the Greater Houston Black Chamber of Commerce for advice on how to make sure the company honors the contract, even if it does not don't use any of her staffing recommendations. She runs the company by herself and cannot afford to hire outside counsel, she said.

"We can provide Patricia access to other companies that may have gone through the same issues that she could consult with," said Rose. Often pairing companies such as Patricia's with a larger staffing agency that can mentor her through such issues has been effective, said Rose.

However, both the state and business owners admit that it's difficult to enforce a program that is based on good faith.

Complaints of noncompliance with the HUB program are run through the Comptroller's office. It conducts on-site audits of HUB programs annually, and a complaint by a business owner can trigger one of these audits.

The inquiries often involve HUB subcontractors' complaints that prime contractors don't fulfill their contracts or make timely payments. Other times, HUB businesses will report each other on suspicion that the listed female or minority owner is not

truly the owner of a company. The audits can lead to the comptroller's de-certifying the business as a HUB or denying certification.

Last fiscal year, 3,798 businesses were audited, and 848 lost their HUB certification or had their applications for certification denied.

The comptroller has reporting criteria to help prevent abuses of the HUB program. Prime contractors must submit a HUB subcontracting plan for contracts over \$100,000. They must also submit a progress assessment report for subcontractors, as well as a corrective action plan if they are not living up to what they promised on minority subcontracting.

"Noncompliance with these requirements can stop on payment on the prime's invoice," said Cagle-Hinojosa. "If contractors continue to be noncompliant, it can impact their vendor score."

The score is attached to the vendor's profile in the comptroller's database, and if a vendor's score gets too low, the company can be barred from bidding on certain projects or even lose certification.

"Enforcement is happening, but not enough to make a difference," said Moore.



It can be difficult because state agencies all have different operating procedures, according to Cagle-Hinojosa.

“The program is a tremendous program, but it has to have some teeth,” said Moore.

### **Goliath**

The larger the state agency, the harder it can be to enforce good-faith goals.

“What I hear from contractors that I talk to also is that TxDOT is notoriously bad about hitting their contracting goals with minority firms,” said Johnson.

The Department of Transportation, known as TxDOT, has the largest budget of any state agency, and by a wide margin. It spends \$7.5 billion annually, with over \$500 million going to HUB businesses. Black-owned businesses received half-of-one percent of those contracted dollars.

Its HUB utilization rate was 7.26 percent last year, but the agency goal was 12 percent.

“Those are staggering numbers. That’s almost criminal,” said Sen. Borris Miles, an African-American Democrat from Houston. One of TxDOT’s largest projects this fiscal year will be the 10-mile SH 288 Toll Lanes Project in Harris County, which is part of Miles’ district.

“I just want to see TxDOT move forward, not backwards,” said Miles, who owns one of the largest insurance agencies in Texas. “Something has to happen to change the pattern that we’re going in now.”

The department has acknowledged that its minority contracting levels need improvement, and has hosted monthly meetings to get feedback from contractors.

“While we do our best to reach out to minority and women owned businesses, it is a constant process to engage those businesses in meaningful ways,” said Becky Ozuna, spokesperson for TxDOT, in an email statement. “TxDOT is truly committed to serving all Texans fairly to deliver the best transportation system at a great value for the citizens of Texas.”

A Sunset Advisory Commission report last year found that TxDOT often had difficulty providing data about its engagement programs, “even about basic elements and requirements of the program.”

The report stated that the agency had done little to improve its HUB after a 2015 state audit said that it had ‘minimally complied” with HUB protocols.

TxDOT’s HUB goals are set by its civil rights division, which the Sunset Commission found “lacks a process to understand why the department is failing to meet HUB goals” or improve its performance. The report stated that the division “does little to monitor program implementation,” describing the lack of oversight and support as a “decentralized contracting environment.”

Black business owners came to the monthly TxDOT meeting in March to voice concerns about the low number of contracts that it has awarded to minority businesses.

Tony Council, president of TLC Engineering, based in Houston, spoke about his inability to secure a contract with TxDOT.

“I am certified, and in 17 years owning TLC Engineering, I have no contracts from TxDOT,” said Council. “We do good work. All we need is a chance.”

The Sunset Advisory Commission found that TxDOT “does not do enough to identify and support eligible contractors using outreach and training.”

Council told of a case when he was awarded a subcontract, but when the procurement budget was cut, his business was the first subcontractor kicked off the contract.

“That’s five years’ worth of work down the drain,” said Council.

The Sunset report advised the agency to standardize protocols for “addressing failure to meet its business opportunity goals.”

TxDOT has since started mentorship programs and is testing practices such as a “HUB scorecard” to keep it on track to meet a 12-percent utilization goal in the 2017 fiscal year.

The agency said it will “measure their effectiveness” and will monitor the program for issues before rolling out the scorecard statewide during the next fiscal year. The agency also said it attended 77 outreach and educational events and conducted 120 one-on-ones for minority and women-owned businesses in the last 18 months.

During a recent TxDot meeting, Transportation Commissioner Laura Ryan said TxDOT was “on pace to meet the 12 percent goal.”

“I’m feeling optimistic that the commissioners and leadership of TxDOT want to do the right thing, but I have to encourage them to do it, if you know what I mean,” said Miles.

### **Enforcement**

TxDOT was not alone in failing to meet HUB agency goals.

Focus groups during the 2009 disparity study revealed that participants felt “good-faith efforts” by agencies and contractors were not reviewed or enforced.

“In order to see any increase in the utilization, the recommendations have to be implemented otherwise you’re still where you were,” said Smith of MGT of America.

Rep. Johnson is trying to address those concerns with House Bill 1489, which would freeze salary increases or withhold bonuses from the heads of state agencies that did not meet HUB goals the previous fiscal year.

“You have to make somebody accountable. That’s the way it works,” said Johnson. “If you don’t make an individual responsible, then it’s just a ‘nice to have’ policy. It’s not something you’re going to do.”

Johnson got the idea to incentivize the program from a friend in Dallas who used to run a real estate company.

“What type of business runs like this? Missing targets by 40 percent and there’s no consequences for anybody?” said Johnson. “We ought to be embarrassed about having goals that we never meet.”

Although he’s optimistic about getting the bill passed, Johnson said he hopes it sends a message to agency heads.

“One of the things I give myself a very poor grade on is minority-owned businesses,” said Rep. Helen Giddings, an African-American Democrat from DeSoto, during a hearing on Johnson’s bill. Giddings sits on the House State Affairs Committee and will be working with Johnson to get the bill to the House floor. “I’m sorry to report that after all the years I’ve been sitting here, that 1 percent hasn’t changed.”

Advocates of the bill don't want to create tension between the agencies and the HUB business, but hope incentivizing the program will lead to tangible change.

"This bill is not a swipe at agency heads, but a wake-up call for legislators on an issue that continues to persist," said O'Neal.

### **Texas pride**

Minority-owned businesses have spoken out especially against state agencies awarding contracts to businesses based outside of Texas.

"It's not good for us when we see people parachute in from out of town to do that work," said Council. "We have some of the most talented people in Houston in engineers in this city. Why are we going elsewhere?"

The majority of the companies that did the design work and infrastructure for the SH 288 project were non-Texas companies, said Sen. Miles. "Texans should be appalled by that alone," he said.

"There's a strong ethos of self-sufficiency in Texas, and there's a sentiment that Texas should not be losing business to other states," said Rottinghaus. "You've got

major employers in your district who rely on government contracts to make ends meet, so you're going to catch hell from constituents who rely on them."

Miles expressed frustration over TxDOT's decision to award Dragados USA, a Seattle-based contractor, the US 181 Harbor Bridge Replacement Project, a coveted contract to rebuild a Corpus Christi bridge.

"The good ol' boys in Texas should be upset about that, that our Texas dollars are going to other states," said Miles.

After Dragados was sued a discrimination in February the Federal Highway Administration investigated and found that it had violated state and federal laws related to the state of Washington's Disadvantaged Business Enterprise program. The administration's investigation found that Dragados and its contracting partner "placed artificial barriers in its RFP {request for proposal} that created hardships for DBE respondents." It also led "DBEs to believe that they would work for a certain contract amount and later dismissing them early and either self-performing the remainder of the work or hiring a non-DBE to complete the work."



The investigation found that Dragados “inflated DBE participation reports based upon unsubstantiated commitments.” The lawsuit, filed by a local trucking company and registered DBE, is still in progress.

“I’m hoping that the leadership understands that it’s 2017. Texas is very diverse. We should really be trying to take advantage of the strengths Texas has in its diversity,” said Miles. “That’s the richness of Texas. That’s the boldness of Texas.”

## **Divided**

As the HUB program strives to even the playing field for Texas businesses on a good-faith effort, a divide has grown between members of the program.

Women-owned businesses received almost half of all HUB expenditures last year, totaling over \$1 billion. In past years women-owned businesses have received more state expenditures than all the other minority groups combined.

“The HUB program from its very beginning is a program for women and minority-owned businesses, but if you listen to the governor, you would think it’s only women,” said Johnson. “It’s all he touts, because we’re doing such a terrible job at it.”

Gov. Greg Abbott hailed the growth of women-owned businesses in Texas during his State of the State speech in January.

“Texas is number two in the nation for women-owned businesses. Our goal is to make Texas number one,” said Abbott.

But under the HUB program, companies owned by African-American women, such as Patricia Alexander, are classified only as black-owned.

“I greatly appreciate the help and support I have received as a woman-owned business, particularly in higher education in Texas,” Kathleen Acock, chief executive officer Alpha Building Co. in San Antonio, said in an email. “This is particularly true at the local level, and the advice and counseling we have received from the HUB coordinators and members of procurement.”

Alpha Building, a family-run company, received more than \$28 million in HUB contracts, last fiscal year, the fourth largest of any HUB company.

The top three earning woman-owned businesses under the HUB program last year were all family-run or led by married couples.

There are rumors in the contracting industry that some of those companies are actually run by men. The HUB program requires that such companies have a female president, and that she participates in the day-to-day operations of the company.

“You’ll just hear the grumbling and the rumors, but I think it’s way past rumors,” said O’Neal.

Several construction companies in Houston that were accused of that practice did not respond to a request for comment, although they assert their female ownership on their company websites.

If someone reports violators to the Comptroller’s office, the agency can add the company in question to its annual on-site audits. However, the Comptroller doesn’t keep data on how many of the 848 businesses that lost HUB certification last year were in violation of ownership rules.

“I’m not here to knock woman-owned businesses,” said Sen. Miles. He said he wants to rectify the “complete discrepancy” between black-owned businesses and female-owned businesses under the HUB program.

Seventy-nine percent of business owners surveyed by Bureau of Business Research in 2014 said they “agreed or strongly agreed” that black-owned businesses had less access to procurement opportunities compared with white-owned businesses.

“I know that the governor has made the commitment to raise the game for women business enterprises,” said Callier. “But if you’re going to make that commitment, then make it all way the around.”

The survey also found that over 40 percent of black-owned businesses hired “primarily black” employees.

“I could put a lot of people that are unemployed to work, and I want to put people to work,” said Alexander, who says the majority of the candidates at her staffing candidates are black. “I have a pipeline of qualified people that need work.”

Advocates of black-owned business interests believe that improving the HUB program could increase the prosperity of black communities.

“The impacts are not just on the businesses. This is about quality of life,” said O’Neal. “If businesses are successful and profitable, they actually change their communities because they are the first opportunity for employment, and they are the tax base.

“So when 15 percent of the population is effectively locked out of this huge economic opportunity, it’s a problem,” he said.

Alexander is still waiting for her \$75,000 payment from the construction company and is looking to get her second HUB contract soon. She hopes to achieve the success that has seen many Hispanic and women-owned businesses achieve under the program, but is unsure whether she will ever have that opportunity.

“That’s where the anger comes in, because I have a family too,” said Alexander.

“I don’t know where we fit in here.”

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## **VITA**

Dagney Devlin Pruner was born in New York City in 1990. After completing her International Baccalaureate studies at The Awty International School in Houston, Texas in 2008, she entered The University of Virginia on the Jefferson Scholarship. During her college years, she continued her Spanish and Arabic studies and spent two summers abroad conducting research in sub-Saharan Africa as part of her major, Global Development Studies. Upon graduation in 2012, she moved to her hometown of New York City to work as a trader on Wall Street. She decided to pursue a career in journalism in the summer of 2015 and began her studies at the Graduate School at The University of Texas at Austin. She is expected to graduate in May 2017 and will remain in Austin after graduation to work full-time in communications.

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This manuscript was typed by the author.